

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
v.)	ID: 0804008973
)	
DAWANN DIXON,)	
)	
Defendant.)	

ORDER

**Upon Defendant's Motion for Post-conviction Relief –
*SUMMARILY DISMISSED.***

1. On February 5, 2009, a jury convicted Defendant of Assault in the First Degree, Possession of a Firearm During the Commission of a Felony, and Possession of a Deadly Weapon by a Person Prohibited. On June 26, 2009, Dixon was sentenced to thirty-eight years imprisonment, suspended after ten years for probation. Defendant filed a direct appeal, and his conviction was affirmed on May 20, 2010.¹ The mandate was filed on June 8, 2010.

2. Defendant filed this *pro se* motion for post-conviction relief on April 29, 2011.

¹*Dixon v. State*, 996 A.2d 1271 (Del. 2010).

3. Dixon makes three claims. First, Dixon alleges the State failed to prove that shooting Kevin Butcher in the leg created substantial risk of death or caused serious physical injury. By the same token, Dixon also claims the State failed to prove he acted recklessly when he shot Butcher. Specifically, Dixon alleges “there is no evidence, direct or circumstantial, offered by the State that Kevin Butcher faced an actual and real risk of death.”

4. Second, Dixon alleges trial counsel was ineffective because he stipulated to serious physical injury. Specifically, Dixon alleges “although the State did offer evidence of an injury in this case, the degree of that injury was for the jury to decide, not trial counsel.”

5. Third, Dixon alleges the court “committed plain error in not declaring acquittal on charge of Assault in the First Degree on its own initiative.” That claim stems from the State’s alleged failure to prove Dixon’s conduct created a substantial risk of death to Butcher.

6. Dixon’s motion was properly referred² and upon preliminary review, it appears that the motion is subject to summary dismissal.³ Dixon’s first and third claims are procedurally barred, and the ineffective counsel claim is without

² Super. Ct. Crim. R. 61(d)(1).

³ Super. Ct. Crim. R. 61(d)(4).

merit.

7. Dixon's first and third claims could have been raised at trial and on direct appeal. Dixon has not shown cause for the procedural default,⁴ and review is not warranted in the interest of justice.⁵ To the contrary, the evidence easily shows that Butcher was shot in the leg and the bullet lodged there. He was taken to the hospital and given emergency treatment. Thus, Dixon's conduct potentially satisfied several Assault in the First Degree requirements. For example, shooting someone creates a substantial risk of death even if the wound is minor, and a bullet wound amounts to serious physical injury.⁶ Here, again, the bullet is lodged in Butcher's leg.

8. Dixon has failed to show that trial counsel's decision to stipulate to serious physical injury fell below a reasonable standard. The defense was the best the court can envision: Dixon was not the shooter. While the defense could have argued Assault in the Second Degree instead, that would have increased Defendant's chances of conviction through compromise. Worse, it would have exposed the jury to inflammatory evidence of Butcher's wound, pain, treatment and prognosis. Counsel's decision to focus the jury's attention on the chaos surrounding the

⁴ Super. Ct. Crim. R. 61(i)(3)(A).

⁵ Super. Ct. Crim. R. 61(i)(5).

⁶ *See* 11 *Del. C.* § 613(a)(1), (3).

shooting, not the shooting's consequences, was a reasonable, tactical choice. Thus, Dixon has failed to overcome *Strickland v. Washington*'s first prong.⁷

9. In summary, the State's biggest challenge at trial was proving that Dixon did the shooting. The State got a boost from the court's admitting a "911" call as an excited utterance. Those things were argued heavily at trial and on appeal. The points Dixon has raised here are relatively less important.

For the foregoing reasons, Defendant's motion for post-conviction relief is **SUMMARILY DISMISSED**. Prothonotary **SHALL** notify Defendant.

IT IS SO ORDERED.

Date: September 30, 2011

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Criminal)
pc: Joseph S. Grubb, Deputy Attorney General
Dawann Dixon, Defendant

⁷ 466 U.S. 668, 687 (1984) ("The defendant must show that counsel's performance was deficient [and] made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.").